

Decision **PROPOSED DECISION OF ALJ DIVISION** (Mailed 10/16/2015)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Services and Facilities of Southern California Edison Company and San Diego Gas and Electric Company Associated with the San Onofre Nuclear Generating Station Units 2 and 3.

Investigation 12-10-013
(Filed October 25, 2012)

And Related Matters.

Application 13-01-016
Application 13-03-005
Application 13-03-013
Application 13-03-014

**DECISION DENYING INTERVENOR COMPENSATION TO
WORLD BUSINESS ACADEMY**

Intervenor: World Business Academy (WBA)	For contribution to Decision (D.) 14-11-040
Claimed: \$425,437.55	Awarded: \$0.00
Assigned Commissioner: Catherine J.K. Sandoval	Assigned Administrative Law Judge: Administrative Law Judge Division

PART I: PROCEDURAL ISSUES

A. Brief description of Decision:	Decision Approving Settlement Agreement as Amended and Restated by Settling Parties.
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B. Intervenor must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:¹

	Intervenor	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	January 8, 2013	Correct
2. Other specified date for NOI:		
3. Date NOI filed:	February 7, 2013	Correct; <i>see</i> also Part I(C), Additional Comment to Part I (B) (3).
4. Was the NOI timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	I.12-10-013	<i>See</i> Part I(C), CPUC's Additional Comment to Part I (B) (5 – 7).
6. Date of ALJ ruling:	July 12, 2013	<i>See</i> Part I(C), CPUC's Additional Comment to Part I (B) (5 – 7).
7. Based on another CPUC determination (specify):		<i>See</i> Part I(C), CPUC's Discussion on Part I (B) (8 – 12).
8. Has the Intervenor demonstrated customer or customer-related status?		No; <i>see</i> Part I(C), CPUC's Discussion on Part I (B) (8 – 12).
Showing of “significant financial hardship” (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	I.12-10-013	No; <i>see</i> Part I(C), CPUC's Additional Comments and Discussion.
10. Date of ALJ ruling:	July 12, 2013	No; <i>see</i> Part I(C), CPUC's Additional Comments and Discussion.
11. Based on another CPUC determination (specify):		<i>See</i> Part I(C), CPUC's Additional Comments and Discussion.
12. Has the Intervenor demonstrated significant financial hardship?		No; <i>see</i> Part I(C), CPUC's Additional Comments and Discussion.
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.14-11-040	Correct.
14. Date of issuance of Final Order or Decision:	November 25, 2014	Correct.
15. File date of compensation request:	January 23, 2015	Correct.
16. Was the request for compensation timely?		Yes

¹ All statutory references are to California Public Utilities Code unless indicated otherwise.

C. CPUC's Additional Comments and Discussion on Part I:

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Part I(B)(3)	Subsequent to the original NOI, two amended NOIs were filed in I.12-10-013: on March 15, 2013 and July 8, 2013.
Part I(B)(5 – 7)	The formal record for the proceeding does not contain the Administrative Law Judge's (ALJ) Ruling of July 12, 2013, to which World Business Academy (WBA) refers. ² WBA's eligibility is addressed in this decision.
Part I(B)(8 – 12)	<p>Section 1802(b) defines a customer as</p> <ul style="list-style-type: none"> • A participant representing consumers, customers, or subscribers of a utility (§ 1802(b)(1)(A)); • A representative who has been authorized by a customer (§ 1802(b)(1)(B)); • A representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, or to represent small commercial customers who receive bundled electric service from an electrical corporation (§ 1802(b)(1)(C)). <p>WBA claims customer eligibility as a “participant,” i.e., the first of the three statutory definitions of customer. We disagree, as discussed below. WBA is a “nonprofit think tank and action incubator” that works “to inspire business to assume responsibility for the whole of society.”³ WBA's NOI states that it has represented numerous entrepreneurs, middle managers and executives of larger companies for over 25 years. WBA asserts it is eligible for compensation as “a participant representing consumers, customers, or subscribers of a utility” (§ 1802(b) (1) (A)). However, the assertion is inconsistent with the Commission's analysis, in D.98-04-059, of the statutory definition of “customer,” and specifically “participant.” According to D.98-04-059, the participant must be an actual utility customer who represents more than the participant's own narrow self-interest; a self-appointed representative. (D.98-04-059 at 30; <i>see also</i> D.86-05-007 (1986 Cal. PUC LEXIS 287 at *5)). WBA does not receive an electric bill in WBA's name. Instead, WBA receives electric</p>

² An electronic mail dated July 12, 2013, from ALJ Darling to Sharon Emery and Sabrina Venskus states that WBA has met the preliminary requirements for eligibility as an intervenor and demonstrated that participation will result in a significant financial hardship. However, the e-mail was not filed nor served on parties. The e-mail, therefore, is not a part of the proceeding's formal record. In addition, the e-mail did not address issues with WBA's customer status or showing of significant financial hardship.

³ *See* WBA's website at <http://worldbusiness.org/>.

service as tenant through its landlord's account. In D.00-04-059, the Commission addressed a similar situation, where a business intervenor did not have an electric bill in the intervenor's name. The Commission denied the intervenor's eligibility to claim compensation as a participant representing consumers. The Commission explained the denial, as follows:

Section 1802(b) addresses this point. ... It is clear, based on both the clear language of the statutes, and the Commission's interpretation of those statutes, that in order to be eligible for an award of intervenor compensation, a "participant representing consumers" in a Commission proceeding must be an "actual customer" of the utility. ... The existence of an electric bill in the intervenor's name is one way an intervenor can show it meets the statutory definition as an actual customer. (D.00-04-059, 2000 Cal. PUC LEXIS 374 at *6-7.)

The Commission adopted an exception to this requirement for a representative of the tenants of submetered mobile-home parks (MHPs). The Commission explained that Latino Issues Forum, representing the interests of the tenants in the rulemaking examining issues involved in the submetering discounts for MHPs, was eligible for intervenor compensation although the tenants were not actual utility customers. (D.05-05-009 2005 Cal. PUC LEXIS 170, *12-13.) WBA does not fall within this exception.

The Commission has not yet addressed whether the customer exception created in D.05-05-009 would also authorize customer eligibility for submetered residential participants, e.g., tenants in a submetered apartment building, whose situation has similarities to that of tenants of MHP. Even if the Commission were to extend the exception in that way, it would still not authorize customer eligibility for WBA, which is not a residential tenant.

Moreover, a participant must represent not only the participant's self-interests but also the broader interests of other eligible customers. WBA states that it "will work to represent the economic interests of its members, fellows and constituents, and of businesses, including small, mid-size, and large-size businesses."⁴ WBA states that it will focus on addressing issues in this proceeding "from a business perspective and on behalf of business customers."⁵ For discussion purposes, we accept the assertion that WBA represents interests of all of the SCE's business customers; however, we reject the notion that the statute contemplates ratepayers having to pay for the participation, under any of the definitions of a "customer" that serves the interest of mid- or large-sized businesses. The Commission's analysis in D.86-05-007 erects an insurmountable barrier to WBA's eligibility:

The chief concern is that an affluent client could arrange to be represented by a nonprofit firm to evade the responsibility for paying for the costs of representing the client's interests. If an award were made to the representative under these circumstances, the

⁴ WBA's Motion for Party Status filed on February 6, 2013 at 3.

⁵ WBA's NOI filed February 7, 2013 at 4; WBA's First Amended NOI filed March 15, 2013 at 4; WBA's Second Amended NOI filed July 8, 2013, at 4-5.

costs of representation would have been shifted from the client who could afford the costs to the general body of ratepayers. This is not a result that was intended by the Legislature when it authorized the compensation program. D.86-05-007 1986 Cal. PUC LEXIS 287 at *11.

In short, compensating an intervenor representing the interests of medium and large businesses or wealthy individuals would contravene the purpose of the intervenor compensation program. The program “targets those situations in which an important aspect of the public good might be overlooked because the persons most interested in that aspect would not otherwise have the financial incentive to participate.” (D.93-11-020 1993 Cal. PUC LEXIS 854, *4; 52 CPUC2d 97.) Medium and large business customers or wealthy individuals are more likely to afford reasonable costs of participating in this proceeding than a small commercial customer. Such businesses and individuals are financially able to fund the representation of their interests without using the intervenor compensation program to compensate their costs.

We conclude that WBA has assumed the role of an agent for entities or individuals who would be found ineligible for compensation under § 1802(b). This conclusion is consistent with what we see as the legislative intent in creating the intervenor compensation program. For example, the legislative history of Senate Bill 521, codified as § 1802.3, notes the prohibition on providing intervenor compensation to customers who are financially able to represent themselves.⁶

Our conclusion is also consistent with the strong inference to be drawn from § 1812. That statute provides that a group representing small agricultural customers “that would otherwise be eligible for an award of compensation without the presence of large agricultural customers ... shall not be deemed ineligible solely because that group also has members who are large agricultural customers.” The Legislature made no such provision for large commercial or industrial customers. To the contrary, the Legislature expressly prohibited the Commission from changing the definition of “small commercial customer” in such a way as to enable “organizations representing small businesses” to include large commercial and industrial customers.” *See* § 1802(h).

With respect to significant financial hardship, WBA asserts that it cannot afford without undue hardship to pay the costs of effective participation. This test is formulated in § 1804(g) as follows:

[T]he customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation.

For a participant [e.g., Category 1 customer], that means we expect the intervenor to provide financial information to demonstrate hardship. We require “detailed

⁶ *See* Senate Bill 521 legislative history and analysis at <http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml>.

	<p>documentation of their finances, distinguishing between discretionary and committed grant funds, if applicable” (D.98-04-059 at 38, relying on D.86-05-007).</p> <p>The Commission generally requires a detailed income and expense statement and a year-end balance sheet.⁷ The unaudited financial report submitted by WBA is inadequate.</p> <p>Therefore, we find that WBA has not demonstrated its status as a “customer” under § 1802(b) (1) (A), nor has it demonstrated “significant financial hardship” under § 1804(g).</p>
	<p>Finding WBA ineligible to claim intervenor compensation renders moot the issues of WBA’s substantial contribution to the Commission’s decision and of a reasonableness of the requested compensation.</p>

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the Claim?	Yes.
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If so:

Party	Reason for Opposition	CPUC Discussion
San Diego Gas & Electric Company	World Business Academy’s overstated its contribution to the decision. The claimed fees are not reasonable.	The decision’s finding of World Business Academy’s ineligibility to claim intervenor compensation renders substantial contribution and reasonableness issues moot.

⁷ D.98-04-059 at 38.

B. Comment Period: Was the 30-day comment period waived (<i>see</i> Rule 14.6(c) (6))?	No.
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If not:

Party	Comment
WBA	<p>The finding that WBA is not a "customer" is erroneous and contrary to the facts. In reaching this conclusion, the PD relies on D.00-04-059, which held that "a 'participant representing consumers' in a Commission proceeding must be an 'actual customer' of the utility." The fact that WBA pays its electric bill to Southern California Edison ("SCE") through its rent payment to its landlord rather than directly to the utility is a distinction without a difference.</p> <p>WBA should qualify as a customer under §1802(b)(C) because WBA is like other national environmental groups that advocate for clean energy at the Commission, and none of those organizations are required to show that they make monthly payments to any of the Commission-jurisdictional utilities. WBA should also be deemed to qualify under §1802(b)(C) because WBA's service in advocating for the broader public interest in this and other proceedings is virtually identical to the services rendered by those other [environmental] groups and because WBA's bylaws specifically authorize it "to conduct research and educate the world business community and the public at large on critical contemporary world problems" and "to conduct related activities."</p> <p>The finding that WBA is somehow representing the interests of "medium and large businesses" is erroneous and contrary to the facts. The finding that WBA would not suffer financial hardship is erroneous and contrary to the facts.</p> <p>The PD ignores ALJ Darling's July 12, 2013 e-mail ruling, which WBA asserts ruled that the documents that WBA had submitted in its second Amended Notice of Intent to Claim Intervenor Compensation "establish that WBA is a customer of SCE."</p>
CPUC Discussion	
<p>WBA's assertion lacks merit that the PD errs in finding that WBA is not an eligible Category 1 customer because it is not an "actual customer." As discussed above, D.00-04-059 addressed the appeal of an ALJ ruling in R.98-12-015 that found the Solar Development Cooperative (SDC) ineligible to claim intervenor compensation because it was not a "customer" as defined in § 1802(b). SDC's appeal sought a determination by the Commission as to whether a customer must have an electricity bill in the customer's name. D.00-04-059 determined that in order to be eligible for an award of intervenor compensation, a "participant representing consumers" in a Commission proceeding must be an "actual customer" of the utility.</p> <p>Neither WBA's initial NOI, its amended NOI or its Second Amended NOI assert eligibility as a "Category 3" customer. Only in its comments on the proposed decision does WBA allege eligibility as a Category 3 customer. A Category 3 customer must demonstrate customer status by showing that it is a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, or to represent small commercial customers who receive</p>	

bundled electric service from an electrical corporation. (§1802(b)(1)(C).)

The WBA articles of incorporation state,

“The Corporation is organized for the educational purpose of improving or developing people’s capacity to research, analyze, and solve problems of significant concern such as global development, security and the environment and for related educational, scientific and charitable purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue law.”

The WBA bylaws state,

“The purposes of the [WBA] shall be (a) to conduct research and educate the world business community and the public at large on critical contemporary world problems, and to catalyze change along constructive paths through a network of business leaders; (b) to present educational programs through publications, video tapes, conferences, public discussion groups, forums, panels, lectures, and similar activities; and (c) to conduct related activities.”

WBA’s articles of incorporation or bylaws cannot be reasonably interpreted to authorize WBA to “represent the interests of residential customers, or to represent small commercial customers who receive bundled electric service from an electrical corporation” in Commission proceedings.”

WBA, in its comments on the proposed decision, for the first time alleges that it is eligible as a Category 3 customer because its advocacy for the broader public interest in this and other proceedings “is undistinguishable from the other, more prominent national environmental groups” such as Sierra Club, Friends of the Earth (FOE) and the National Resources Defense Council (NRDC). WBA asserts that “because the Academy’s service in advocating for the broader public interest in this and other proceedings is virtually identical to the services rendered by those other, more prominent groups,” the Academy should qualify under § 1802(b)(1)(C).

WBA’s assertion that it is an eligible Category 3 customer is untimely. A Category 3 customer, either in its NOI or in its claim, must demonstrate significant financial hardship under the standard established for Category 3 customers (i.e., that the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding). (§1802(g); §1804(a)(2)(B).) The NOI, amended NOIs and claim do not provide the required showing of significant financial hardship for Category 3 customers. WBA has not satisfied this requirement.

Administrative Law Judge rulings on NOIs are preliminary, while the Commission’s award decisions affirm or change this finding when making final determinations. Section 1804(b)(1) states, “If the customer's showing of significant financial hardship was included in the [NOI] the administrative law judge, in consultation with the assigned commissioner, shall issue within 30 days thereafter a preliminary ruling addressing whether the customer will be eligible for an award of compensation. (Emphasis added.) Setting aside the serious defects in the July 12, 2013 ruling (i.e., the failure to file and serve the rulings on WBA’s preliminary eligibility and motion to file confidential materials under seal), a preliminary finding of eligibility by an ALJ does not guarantee that the intervenor will be ultimately determined to be a customer or receive compensation. For example, D.14-08-031 found the Black Economic Council was not eligible for compensation even though the July 8, 2011 ALJ ruling in A.10-11-015 preliminarily found the Black Economic Council eligible for compensation.

The final determination of eligibility for compensation is made by the Commission in its decisions.

FINDINGS OF FACT

1. World Business Academy has not demonstrated its status as a “customer” pursuant to § 1802(b).
2. World Business Academy has not demonstrated significant financial hardship pursuant to § 1802(g).
3. Since WBA is not eligible to claim intervenor compensation, the issues of WBA’s substantial contribution to D.14-11-040 and of reasonableness of the requested compensation are moot.

CONCLUSION OF LAW

1. World Business Academy fails to satisfy eligibility requirements of Pub. Util. Code §§ 1801-1812, and its intervenor compensation claim should be denied with prejudice.

ORDER

- 1 World Business Academy fails to establish eligibility to claim intervenor compensation.
- 2 World Business Academy’s intervenor compensation claim is denied with prejudice.
3. The comment period for today’s period is not waived.

This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:	D15	Modifies Decision?	No
Contribution Decision(s):	D1411040		
Proceeding(s):	I1210013, A1301016, A1303005; A1303013; A1303014		
Author:	Administrative Law Judge Division		
Payer(s):	Southern California Edison Company and San Diego Gas & Electric Company		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier ?	Reason Change/Disallowance
World Business Academy	January 23, 2015	\$425,437.55	\$0.00	N/A	Lack of eligibility to claim intervenor compensation

(END OF APPENDIX)